IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. MICHAEL INGRAM, Defendant.	No. CR 07-4056-MWB **INSTRUCTIONS TO THE JURY**

TABLE OF CONTENTS

INSTRUCTION NO. 1 - INTRODUCTION

Members of the jury, I am giving you these Instructions to help you better understand the trial and your role in it. Consider these instructions, together with all written and oral instructions that I may give you during or at the end of the trial, and apply them as a whole to the facts of the case.

As I explained during jury selection, in an Indictment, a Grand Jury charges defendant Michael Ingram with conspiracy to distribute and to possess with intent to distribute crack cocaine. As I also explained during jury selection, an Indictment is simply an accusation. It is not evidence of anything. The defendant has pled not guilty to the crime charged against him, and he is presumed to be innocent of that offense unless and until the prosecution proves his guilt on that offense beyond a reasonable doubt.

Your duty is to decide from the evidence whether the defendant is not guilty or guilty of the charge against him. You will find the facts from the evidence. You are the sole judges of the facts, but you must follow the law as stated in these instructions, whether you agree with it or not.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, based solely on the evidence, your common sense, and the law in these instructions. Do not take anything that I may have done during jury selection or that I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be. Similarly, do not conclude from

any ruling or other comment that I have made or may make that I have any opinions on how you should decide the case.

Please remember that only defendant Michael Ingram, not anyone else, is on trial here. Also, remember that this defendant is on trial *only* for the offense charged against him in the Indictment, not for anything else.

You must return a unanimous verdict on the charge against the defendant.

INSTRUCTION NO. 2 - PRELIMINARY MATTERS

Before I turn to specific instructions on the offense charged in this case, I must explain some preliminary matters.

"Elements"

The offense charged in this case consists of "elements," which the prosecution must prove beyond a reasonable doubt against the defendant in order to convict him of that offense. I will summarize in the following instructions the elements of the offense with which the defendant is charged.

Timing

The Indictment alleges that the "conspiracy" offense was committed "from about" one date "through" another date. The prosecution does not have to prove with certainty the exact date of the charged offense. It is sufficient if the prosecution's evidence establishes that the offense occurred within a reasonable time of the time period alleged for that offense in the Indictment.

Controlled substances

In these instructions, when I refer to a "controlled substance," I mean any drug or narcotic that is regulated by federal law. The offense charged in this case allegedly involved one such "controlled substance," "cocaine base," which is commonly called "crack cocaine." Cocaine can be converted into other forms, including "cocaine base." Although there are various forms of "cocaine base," the form that is at issue in this case is commonly known as "crack cocaine." "Crack cocaine" is the street name for a form of cocaine base that is usually prepared by

processing cocaine hydrochloride and sodium bicarbonate (baking soda) and that usually appears in a lumpy, rocklike form. You must determine whether or not any form of "cocaine base" involved in the charged offense was actually "crack cocaine," as defined here. If you find that the substance was not "crack cocaine," as defined here, then you cannot convict the defendant of the offense that allegedly involved "cocaine base." In the rest of these Instructions, I will refer to "crack cocaine" rather than "cocaine base."

"Intent" and "Knowledge"

The elements of the charged offense may require proof of what the defendant "intended" or "knew." Where what the defendant "intended" or "knew" is an element of an offense, the defendant's "intent" or "knowledge" must be proved beyond a reasonable doubt. "Intent" and "knowledge" are mental states. It is seldom, if ever, possible to determine directly the operations of the human mind. Nevertheless, "intent" and "knowledge" may be proved like anything else, from reasonable inferences and deductions drawn from the facts proved by the evidence.

An act was done "knowingly" if the defendant was aware of the act and did not act through ignorance, mistake, or accident. The prosecution is not required to prove that the defendant knew that his acts or omissions were unlawful. An act was done "intentionally" if the defendant did the act voluntarily, without coercion, and not because of ignorance, mistake, accident, or inadvertence.

"Possession," "Distribution," and "Delivery"

The offense charged in this case allegedly involved a conspiracy to "distribute" crack cocaine and to "possess with intent to distribute" crack cocaine.

"Distribution," in turn, involves "delivery" or transfer of "possession." The following definitions of "possession," "distribution," and "delivery" apply in these instructions:

The law recognizes several kinds of "possession." A person was in "actual possession" of an item if the person knowingly had direct physical control over that item at a given time. A person was in "constructive possession" of an item, even if the person did not have direct physical control over that item, if the person knew of the presence of the item and had control over the place where the item was located or had control or ownership of the item itself. Thus, mere presence of a person where an item is found or mere proximity of a person to the item is insufficient to establish a person's "possession" of that item. The person must know of the presence of the item at the same time that he or she has control over the item or the place where it was found. "Constructive possession" can be established by a showing that the item was seized at the person's residence, if the person knew of the presence of the item at the residence. If one person alone had actual or constructive possession of an item, possession was "sole." If two or more persons shared actual or constructive possession of an item, possession was "joint."

The term "distribute" means to deliver an item, such as crack cocaine, to the actual or constructive possession of another person. The term "deliver" means the actual, constructive, or attempted transfer of an item, such as crack cocaine, to the actual or constructive possession of another person. It is not necessary that money or anything of value changed hands for you to find that there was a "distribution" of crack cocaine, "possession with intent to distribute" crack cocaine, or a

"conspiracy" to distribute and to possess with intent to distribute crack cocaine. The law prohibits "conspiring" to distribute and/or to possess within intent to distribute crack cocaine. The prosecution does not have to prove that there was or was intended to be a "sale" of crack cocaine to prove the "conspiracy" offense charged in this case.

* * *

I will now give you more specific instructions about the offense charged in the Indictment.

INSTRUCTION NO. 3 - CONSPIRACY

The Indictment charges that, from about 2006 through about August 7, 2007, the defendant knowingly and intentionally conspired with other persons, known and unknown to the Grand Jury, to distribute and to possess with intent to distribute 50 grams or more of crack cocaine. The defendant denies that he committed this "conspiracy" offense.

For you to find the defendant guilty of this "conspiracy" offense, the prosecution must prove beyond a reasonable doubt *all* of the following essential elements as to him:

***One*, between about 2006 and continuing through about August 7, 2007, two or more persons reached an agreement or came to an understanding to distribute and/or to possess with intent to distribute crack cocaine.**

> The prosecution must prove that the defendant reached an agreement or understanding with at least one other person. The other person or persons do not have to be defendants, or named in the Indictment, or otherwise charged with a crime. There is no requirement that any other conspirators be named as long as you find beyond a reasonable doubt that there was at least one other co-conspirator besides the defendant.
>
> The "agreement or understanding" need not have been an express or formal agreement, or have been in writing, or have covered all the details of how it was to be carried out. Also, the members need not have directly stated between themselves the details or purpose of the scheme. The agreement may be inferred from all of the circumstances and the conduct of the alleged participants.

The Indictment charges that the conspirators agreed to commit two separate offenses as the "objectives" of the conspiracy: "distribution of crack cocaine" and "possession with intent to distribute crack cocaine." To assist you in determining whether or not there was an agreement to commit an offense alleged to be an "objective" of the conspiracy, you should consider the elements of that offense. The elements of ***"distribution of crack cocaine"*** are the following: (1) on or about the date alleged, a person intentionally distributed crack cocaine to another; and (2) at the time of the distribution, the person knew that what he or she was distributing was a controlled substance. The elements of ***"possession with intent to distribute crack cocaine"*** are the following: (1) on or about the date alleged, a person possessed crack cocaine; (2) the person knew that he or she was, or intended to be, in possession of crack cocaine; and (3) the person intended to distribute some or all of the controlled substance to another person.

Keep in mind, however, that to prove the "conspiracy" offense, the prosecution is *not* required to prove that there was an agreement to commit *both* objectives. The prosecution must only prove that there was an agreement to commit *either or both* of the objectives alleged. The prosecution also is *not* required to prove that either objective *was actually committed*. Instead, the question is whether the defendant *agreed* to distribute crack cocaine, or to possess with intent to distribute crack cocaine, or both, not whether the defendant or someone else *actually committed* any such offense.

If there was no agreement, there was no conspiracy. Similarly, if you find that there was an agreement, but you find that the defendant did not join in that agreement,

or did not know the purpose of the agreement, then you cannot find the defendant guilty of the "conspiracy" charge.

***Two*, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect.**

Evidence that a person was merely present at the scene of an event, or merely acted in the same way as others, or merely associated with others does not prove that the person joined in an agreement or understanding. A person who had no knowledge of a conspiracy, but who happened to act in a way that advanced some purpose of one, did not thereby become a member. Similarly, the defendant's mere knowledge of the existence of a conspiracy, or mere knowledge that an objective of the conspiracy was being contemplated or attempted, is not enough to prove that the defendant joined in the conspiracy; rather, the prosecution must establish that there was some degree of knowing involvement and cooperation by the defendant.

On the other hand, a person may have joined in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members were. Further, it is not necessary that a person agreed to play any particular part in carrying out the agreement or understanding. A person may have become a member of a conspiracy even if that person agreed to play only a minor part in the conspiracy, as long as that person had an understanding of the unlawful nature of the plan and voluntarily and intentionally joined in it.

> In deciding whether the defendant voluntarily and intentionally joined in the agreement, you must consider only evidence of his own actions and statements. You may not consider actions and pretrial statements of others, except to the extent that pretrial statements of others describe something that the defendant said or did.

***Three*, at the time that the defendant joined in the agreement or understanding, he knew the purpose of the agreement or understanding.**

> The defendant must have known of the existence and purpose of the conspiracy. Without such knowledge, he cannot be guilty of conspiracy, even if his acts furthered the conspiracy. You may not find that the defendant knew the purpose of the agreement or understanding if you find that he was simply careless. A showing of negligence, mistake, or carelessness is not sufficient to support a finding that the defendant knew the purpose of the agreement or understanding.

If the prosecution fails to prove these elements beyond a reasonable doubt as to the defendant, then you must find him not guilty of the "conspiracy" offense charged in the Indictment.

In addition, if you find the defendant guilty of this "conspiracy" offense, then you must also determine beyond a reasonable doubt the quantity of any crack cocaine actually involved in the conspiracy for which he can be held responsible, as explained in Instruction No. 5.

INSTRUCTION NO. 4 - THE DEFENDANT'S SPECIFIC DEFENSE

In addition to denying that the prosecution has proved the conspiracy charge against him beyond a reasonable doubt, defendant Michael Ingram asserts the following specific defense to that charge.

Defendant Michael Ingram contends that, even if there is evidence of a buyer-seller relationship between himself and another person involving crack cocaine, that evidence is not sufficient to establish a conspiracy, even where the buyer intends to resell the crack cocaine. You are instructed that proof of a mere buyer-seller agreement, without any prior or contemporaneous, shared understanding, does not support a conspiracy conviction, because there is no common illegal purpose. Instead, in such circumstances, the buyer's purpose is to buy; the seller's purpose is to sell.

More specifically, there must be an agreement on the common illegal purpose of distributing crack cocaine, that is, some understanding beyond a mere sales agreement, for there to be a conspiracy to distribute crack cocaine. Thus, to establish the existence of a conspiracy, the government must prove beyond a reasonable doubt that there was an agreement among individuals to achieve the common illegal purpose of distributing crack cocaine. Remember that proof of a formal, explicit agreement is not necessary. Thus, a sales transaction, placed in context, can support a conspiracy conviction, if you can reasonably impute a conspiratorial agreement to the parties' actions and the circumstances surrounding

the sales transaction. For example, an on-going understanding involving distribution of large quantities of crack cocaine over a significant period of time is evidence from which you may infer the necessary agreement to distribute crack cocaine, rather than a mere buyer-seller relationship. Evidence that one party "fronted" crack cocaine to another is also evidence from which you may infer the necessary agreement to distribute crack cocaine, rather than a mere buyer-seller relationship. "Fronting" means that one party gave another crack cocaine, the recipient sold some and kept some for himself, and the recipient then paid back the provider with the proceeds of his own sales of the crack cocaine. On the other hand, evidence of a single sale or multiple sales of only small quantities of controlled substances for personal use is insufficient to support a conviction for conspiracy to distribute controlled substances, in the absence of any evidence of intent that the buyer would resell the controlled substances to others. Moreover, a buyer-seller relationship can exist, even if there was no exchange of money, if there was instead an exchange of goods or services of value for the controlled substance.

In deciding whether there was a conspiracy or only a buyer-seller relationship, you should consider all of the evidence. In doing so, you should consider the following factors, which, if established, may suggest an illegal agreement to distribute crack cocaine, rather than a buyer-seller relationship: (1) whether the transaction involved large quantities of crack cocaine; (2) whether the parties had a standardized way of doing business over time; (3) whether the sales were on credit or on consignment; (4) whether the parties had a continuing relationship; (5) whether the seller had a financial stake in a resale by the buyer; and

(6) whether the parties had an understanding that the crack cocaine would be resold. However, keep in mind that no single factor necessarily indicates that the defendant was involved in a conspiracy, just as the absence of a single factor does not necessarily indicate that the defendant was engaged in a simple buyer-seller relationship.

In considering defendant Michael Ingram's specific defense to the charge against him, remember that the burden never shifts to the defendant in a criminal case to prove his specific defense or otherwise to prove his innocence. Rather, the prosecution must prove beyond a reasonable doubt all of the essential elements of the charged offense against the defendant for you to find him guilty of the charged offense.

INSTRUCTION NO. 5 - QUANTITY OF CRACK COCAINE

If you find the defendant guilty of the "conspiracy" offense charged in the Indictment, then you must also determine beyond a reasonable doubt the quantity of crack cocaine actually involved in that offense for which he can be held responsible.

Although the Indictment charges that the offense involved a specific quantity of crack cocaine, the prosecution does not have to prove that the "conspiracy" offense involved the amount or quantity of crack cocaine alleged in the Indictment. However, *if* you find the defendant guilty of an offense charged in the Indictment, *then* you must determine the following matters *beyond a reasonable doubt*: (1) whether that offense actually involved crack cocaine, as charged in the Indictment; and (2) the *total quantity range*, in grams, of the crack cocaine involved in that offense for which the defendant can be held responsible. You may find more or less than the charged quantity of crack cocaine for the charged offense, but you must find that the quantity range you indicate in the Verdict Form for the crack cocaine involved in that offense has been proved beyond a reasonable doubt as the quantity range for which the defendant can be held responsible.

Responsibility

If the defendant is guilty of the "conspiracy" offense charged in the Indictment, then he is responsible for the quantities of any crack cocaine that he actually distributed or agreed to distribute or actually possessed with intent to

distribute or agreed to possess with intent to distribute. He is also responsible for those quantities of any crack cocaine that fellow conspirators actually distributed or agreed to distribute or actually possessed with intent to distribute or agreed to possess with intent to distribute, if you find that the defendant could have reasonably foreseen, at the time that he joined the conspiracy or while the conspiracy lasted, that those prohibited acts were a necessary or natural consequence of the conspiracy. Crack cocaine acquired for personal use should be included when determining the drug quantity for the "conspiracy" offense.

Determination of quantity and verdict

If you find the defendant guilty, you must determine beyond a reasonable doubt the *total quantity range*, in *grams*, of the crack cocaine involved in the charged "conspiracy" offense for which you find the defendant can be held responsible. You must then indicate that *total quantity range* in the Verdict Form. More specifically, if you find the defendant guilty of the "conspiracy" offense charged in the Indictment, then you must determine beyond a reasonable doubt whether the defendant can be held responsible for a conspiracy involving 50 grams or more of crack cocaine, 5 grams or more but less than 50 grams of crack cocaine, or less than 5 grams of crack cocaine.

In making your determination of quantity as required, it may be helpful to remember that one pound is approximately equal to 453.6 grams and that one ounce is approximately equal to 28.34 grams.

INSTRUCTION NO. 6 - PRESUMPTION OF INNOCENCE AND BURDEN OF PROOF

The defendant is presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion that might arise from the defendant's arrest or charge or the fact that he is here in court. The presumption of innocence remains with the defendant throughout the trial. That presumption alone is sufficient to find the defendant not guilty. The presumption of innocence may be overcome as to the defendant only if the prosecution proves, beyond a reasonable doubt, *all* of the elements of the charged offense against him.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. The burden never shifts to the defendant to prove his innocence. Therefore, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. The defendant is not even obligated to produce any evidence by cross-examining the witnesses who are called to testify by the prosecution. Similarly, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict as to that defendant.

Unless the prosecution proves beyond a reasonable doubt that the defendant has committed each and every element of the offense charged against him, you must find him not guilty of that offense.

INSTRUCTION NO. 7 - REASONABLE DOUBT

A reasonable doubt may arise from the evidence produced by either the prosecution or the defendant, keeping in mind that the defendant never has the burden or duty of calling any witnesses or producing any evidence. A reasonable doubt may also arise from the prosecution's lack of evidence. A reasonable doubt is a doubt based upon reason and common sense. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the more serious and important transactions of life. On the other hand, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 8 - DEFINITION OF EVIDENCE

Your verdict must be based only on the evidence presented in this case and these and any other instructions that may be given to you during the trial. Evidence is:

1. Testimony.
2. Exhibits that are admitted into evidence.
3. Stipulations, which are agreements between the parties.

Evidence may be "direct" or "circumstantial." The law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you to decide.

A particular item of evidence is sometimes admitted only for a limited purpose, and not for any other purpose. I will tell you if that happens, and instruct you on the purposes for which the item can and cannot be used.

The fact that an exhibit may be shown to you does not mean that you must rely on it more than you rely on other evidence.

The following are not evidence:

1. Statements, arguments, questions, and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony that I tell you to disregard.
4. Anything that you see or hear about this case outside the courtroom.

The weight of the evidence is not determined merely by the number of witnesses testifying as to the existence or non-existence of any fact. Also, the

weight of the evidence is not determined merely by the number or volume of documents or exhibits. The weight of the evidence depends upon its quality, which means how convincing it is, and not merely upon its quantity. For example, you may choose to believe the testimony of one witness, if you find that witness to be convincing, even if a number of other witnesses contradict the witness's testimony. Also, you are free to disbelieve the testimony of any or all witnesses. The quality and weight of the evidence are for you to decide.

INSTRUCTION NO. 9 - INSTRUCTION WITHDRAWN

INSTRUCTION NO. 10 - CREDIBILITY AND IMPEACHMENT

In deciding what the facts are, you will have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, only part of it, or none of it.

In deciding what testimony to believe, consider each witness's intelligence, the opportunity the witness had to see or hear the things the witness testifies about, the witness's memory, any motives the witness may have for testifying a certain way, the manner of the witness while testifying, whether the witness said something different at an earlier time, the witness's drug or alcohol use or addiction, if any, the general reasonableness of the witness's testimony, and the extent to which the witness's testimony is consistent or inconsistent with any other evidence. In deciding whether or not to believe a witness, keep in mind that people sometimes see or hear things differently and sometimes forget things. You need to consider, therefore, whether a contradiction results from an innocent misrecollection or sincere lapse of memory, or instead from an intentional falsehood or pretended lapse of memory.

If the defendant testifies, you should judge his testimony in the same manner in which you judge the testimony of any other witness.

Ordinarily, witnesses may only testify to factual matters within their personal knowledge. However, you may hear evidence from persons described as experts. Persons may become qualified as experts in some field by knowledge, skill, training, education, or experience. Such experts may state their opinions on matters

in that field and may also state the reasons for their opinions. You should consider expert testimony just like any other testimony. You may believe all of what an expert says, only part of it, or none of it, considering the expert's qualifications, the soundness of the reasons given for the opinion, the acceptability of the methods used, any reason that the expert may be biased, and all of the other evidence in the case.

Just because a witness works in law enforcement or is employed by the government does not mean you should give any more or less weight or credence to that witness's testimony than you give to any other witness's testimony.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness said or did something, or has failed to say or do something, that is inconsistent with the witness's present testimony. If earlier statements of a witness are admitted into evidence, they will not be admitted to prove that the contents of those statements are true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness and, therefore, whether they affect the credibility of that witness.

You may hear evidence that certain witnesses have each been convicted of a crime. You may use that evidence only to help you decide whether or not to believe those witnesses and how much weight to give their testimony.

You should treat the testimony of certain witnesses with greater caution and care than that of other witnesses:

1. You may hear evidence that one or more witnesses are testifying pursuant to plea agreements and/or hope to receive reductions in their sentences in return for their cooperation with the prosecution in this case. If the prosecutor handling such a witness's case believes the witness has provided "substantial assistance," the prosecutor can file a motion to reduce the witness's sentence. The judge has no power to reduce a sentence for such a witness for substantial assistance unless the prosecutor files a motion requesting such a reduction. If the prosecutor files a motion for reduction of sentence for substantial assistance, then it is up to the judge to decide whether to reduce the sentence of that witness at all, and if so, how much to reduce it, but the prosecutor will recommend the specific reduction that the prosecutor believes is appropriate. The prosecutor may also promise to dismiss certain charges in return for a witness's cooperation. You may give the testimony of such witnesses such weight as you think it deserves. Whether or not testimony of a witness may have been influenced by the witness's hope of receiving a reduction in sentence or dismissal of certain charges is for you to decide.

2. You may also hear testimony from one or more witnesses that they participated in the crime charged against the defendant. Their testimony will be received in evidence and you may consider it. You may give the testimony of such a witness such weight as you think it deserves. Whether or not the testimony of such a witness may be influenced by the witness's desire to please the prosecutor or to strike a good bargain with the prosecutor about the witness's own situation is for you to decide.

* * *

If you believe that a witness has been discredited or impeached, it is your right to give that witness's testimony whatever weight you think it deserves.

INSTRUCTION NO. 11 - BENCH CONFERENCES AND RECESSES

During the trial it may be necessary for me to talk with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please be patient, because while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, to avoid confusion and error, and to save your valuable time. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

INSTRUCTION NO. 12 - OBJECTIONS

The lawyers may make objections and motions during the trial that I must rule upon. If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself. Also, the lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible. Do not hold it against a lawyer or the party the lawyer represents because the lawyer has made objections.

INSTRUCTION NO. 13 - NOTE-TAKING

If you want to take notes during the trial, you may, but be sure that your note-taking does not interfere with listening to and considering all the evidence. If you choose not to take notes, remember it is your own individual responsibility to listen carefully to the evidence.

Notes you take during the trial are not necessarily more reliable than your memory or another juror's memory. Therefore, you should not be overly influenced by the notes.

If you take notes, do not discuss them with anyone before you begin your deliberations. At the end of each day, please leave your notes on your chair. At the end of the trial, you may take your notes out of the notebook and keep them, or leave them, and we will destroy them. No one will read the notes, either during or after the trial.

You will notice that we have an official court reporter making a record of the trial. However, we will not have typewritten transcripts of this record available for your use in reaching your verdict.

INSTRUCTION NO. 14 - CONDUCT OF THE JURY DURING TRIAL

You must decide this case based ***solely*** on the evidence presented in court, in light of your own observations, experiences, reason, common sense, and the law as I have explained it in these Instructions. Therefore, to insure fairness, you, as jurors, must obey the following rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk with anyone else about this case or about anyone involved with it until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it, or about any news story, rumor, or gossip about this case, or ask you about your participation in this case until the trial has ended and your verdict has been accepted by me. If someone should try to talk to you about the case during the trial, please report it to me.

Fourth, during the trial, you should not talk with or speak to any of the parties, lawyers, or witnesses involved in this case—you should not even pass the time of day with any of them. It is important that you not only do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the case sees you talking to a person from the other side—even if it is simply to pass the time of day—an unwarranted and unnecessary suspicion about your

fairness might be aroused. If any lawyer, party, or witness does not speak to you when you pass in the hall, ride the elevator or the like, it is because they are not supposed to talk or visit with you, either.

Fifth, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it, or let anyone tell you anything about any such news reports. If you want, you can have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case you will know more about the matter than anyone will learn through the news media.

Sixth, do not do any research—on the Internet, in libraries, in the newspapers, or in any other way—or make any investigation *about this case* on your own.

Seventh, do not make up your mind during the trial about what the verdict should be. Do not discuss this case with anyone, not even with other jurors, until I send you to the jury room for deliberations after closing arguments. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

Eighth, if at anytime during the trial you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer, who will deliver it to me. I want you to be comfortable, so please do not hesitate to inform me of any problem.

I will reserve the remaining Instructions to read to you at the end of the trial.

INSTRUCTION NO. 15 - DUTY TO DELIBERATE

A verdict must represent the considered judgment of each juror. *Your verdict on the charge against the defendant must be unanimous*. It is your duty to consult with one another and to deliberate with a view to reaching agreement if you can do so consistent with your individual judgment. You must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself; but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views, and to change your opinion if you are convinced that it is wrong. To bring twelve minds to an unanimous result, you must examine the questions submitted to you openly and frankly, with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that if, in your individual judgment, the evidence fails to establish the defendant's guilt beyond a reasonable doubt on the offense charged against him, then he should have your vote for a not guilty verdict on that offense. If all of you reach the same conclusion, then the verdict of the jury must be not guilty for the defendant on the charged offense. The opposite also applies for you to find the defendant guilty. As I instructed you earlier, the burden is upon the prosecution to prove beyond a reasonable doubt every essential element of the offense charged

against the defendant, and if the prosecution fails to do so, then you cannot find the defendant guilty of that offense.

Remember, also, that the question before you can never be whether the prosecution wins or loses the case. The prosecution, as well as society, always wins, regardless of whether your verdict is not guilty or guilty, when justice is done.

Finally, remember that you are not partisans; you are judges—judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. However, I suggest that you carefully consider all of the evidence bearing upon the questions before you. You may take all the time that you feel is necessary.

There is no reason to think that another trial would be tried in a better way or that a more conscientious, impartial, or competent jury would be selected to hear it. Any future jury must be selected in the same manner and from the same source as you. If you should fail to agree on a verdict, the case is left open and must be disposed of at some later time.

INSTRUCTION NO. 16 - DUTY DURING DELIBERATIONS

There are certain rules you must follow while conducting your deliberations and returning your verdict:

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, if the defendant is guilty of the charged offense, then the sentence to be imposed is my responsibility. You may not consider punishment of the defendant in any way in deciding whether the prosecution has proved its case against him beyond a reasonable doubt.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible, either in writing or orally in open court. *Remember that you should not tell anyone—including me—how your votes stand numerically*.

Fourth, your verdict must be based solely on the evidence and on the law in these instructions. Therefore, you must return a unanimous verdict on the charge against the defendant. Nothing I have said or done was intended to suggest what your verdict should be—that is entirely for you to decide.

Fifth, in your consideration of whether the defendant is not guilty or guilty of the offense charged against him, you must not consider his race, color, religious beliefs, national origin, or sex. You are not to return a verdict for or against the

defendant on the charged offense unless you would return the same verdict on that charge without regard to the defendant's race, color, religious beliefs, national origin, or sex. To emphasize the importance of this consideration, the verdict form contains a certification statement. Each of you should carefully read the statement, then sign your name in the appropriate place in the signature block, if the statement accurately reflects the manner in which each of you reached your decision.

Finally, I am giving you the verdict form. A verdict form is simply the written notice of the decision that you reach in this case. You will take the verdict form to the jury room. *Again, you must return a unanimous verdict on the charge against the defendant*. When you have reached a unanimous verdict, your foreperson must complete one copy of the verdict form and all of you must sign that copy to record your individual agreement with the verdict and to show that it is unanimous. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your verdict. When you have reached a verdict, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom.

DATED this 3rd day of March, 2008.

Mark W. Bennett

MARK W. BENNETT
U. S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. MICHAEL INGRAM, Defendant.	No. CR 07-4056-MWB **VERDICT FORM**

As to defendant Michael Ingram, we, the Jury, unanimously find as follows:

COUNT 1: CONSPIRACY		**VERDICT**
Step 1: Verdict	On the "conspiracy" offense, as charged in the Indictment and explained in Instruction No. 3, please mark your verdict.	____ Not Guilty ____ Guilty
Step 2: "Objective(s)"	*If you found the defendant "guilty" of the "conspiracy" offense charged in the Indictment*, please indicate the "objective" or "objectives" of the conspiracy.	
	_____ Distribution of crack cocaine	
	_____ Possession with intent to distribute crack cocaine	
Step 3: Quantity of crack cocaine	*If you found the defendant "guilty" of the "conspiracy" offense charged in the Indictment*, please indicate the quantity of crack cocaine involved in the offense for which the defendant can be held responsible. (*Quantity of crack cocaine is explained in Instruction No. 5*.)	
	_____ 50 grams or more of crack cocaine	
	_____ 5 grams or more, but less than 50 grams of crack cocaine	
	_____ less than 5 grams of crack cocaine	

CERTIFICATION
By signing below, each juror certifies that consideration of the race, color, religious beliefs, national origin, or sex of the defendant was not involved in reaching his or her individual decision, and that the individual juror would have returned the same verdict for or against the defendant on the charged offense regardless of the race, color, religious beliefs, national origin, or sex of the defendant.

_____
Date

_____	_____
Foreperson	Juror
_____	_____
Juror	Juror
_____	_____
Juror	Juror
_____	_____
Juror	Juror
_____	_____
Juror	Juror
_____	_____
Juror	Juror